



IN THE
Supreme Court of the United States

October Term, 1978

NO. 78-1056

HAZEL RUTH LOGAN, et al.,
Appellants,

v.

W. E. STRICKLAND, Commissioner, et al.,
Appellees.

On Appeal From The Supreme Court Of Georgia

**MOTION OF APPELLEES W. E. STRICKLAND,
GEORGIA STATE REVENUE COMMISSIONER,
ARTHUR K. BOLTON, ATTORNEY GENERAL
OF THE STATE OF GEORGIA, AND
J. H. COFER, COMMISSIONER OF THE
GEORGIA DEPARTMENT OF PUBLIC SAFETY,
TO DISMISS OR AFFIRM**

ARTHUR K. BOLTON
Attorney General

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Arthur K. Bolton and J. H. Cofer*

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January, 1979

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**MOTION OF APPELLEES W. E. STRICKLAND,
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GEORGIA DEPARTMENT OF PUBLIC SAFETY,
TO DISMISS OR AFFIRM**

The appellees W. E. Strickland, Georgia State Revenue Commissioner, Arthur K. Bolton, Attorney General of the State of Georgia, and J. H. Cofer, Commissioner of the Georgia Department of Public Safety, respectfully move to dismiss this appeal or to affirm the decision of the Supreme Court of Georgia in this case. Rule 16(1) (a) and (c).

CONSTITUTIONAL PROVISION INVOLVED

Article I, Section 10, Paragraph I

No State shall . . . pass any . . . Law impairing the
Obligation of Contracts. . . .

QUESTION PRESENTED

Whether the termination of a municipal business license by virtue of the repeal by the General Assembly of Georgia of a municipal charter violates the Contract Clause of the United States Constitution as to the license holders.

MOTION TO DISMISS

The appellees Strickland, Bolton and Cofer move to dismiss the appeal on the ground that with the passage of time this appeal has been rendered moot thus removing it from the jurisdiction of this Court.

The business licenses, which are set forth in Appendices A, B, C and D and which are the subject matter of this litigation, reflect on their faces that they expire effective December 31, 1978. Thus, the licenses, and such contracts as they constitute between the appellants and the City of Mountain View, have by their own terms ceased to exist. The rights of the appellants in such licenses have likewise expired. The appellants therefore seek to invoke the appellate jurisdiction of this Court as to a question which is now moot. This they may not do. *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975).

In that the controversy is moot, the appeal should be dismissed.

MOTION TO AFFIRM

Alternatively, the appellees Strickland, Bolton and Cofer move to affirm the decision of the Supreme Court of Georgia on the ground that it is manifest that the question on which the decision of the cause depends is so insubstantial and the decision below is so obviously correct as not to need further argument.

The appellants contend in their Jurisdictional Statement (pp. 8-9) that the repeal ¹ of the charter of the City of Mountain View impaired two types of contractual obligations as to them. The first type of obligation concerns alleged contracts, evidenced by business licenses and alcoholic beverage licenses,² between the appellants, as license holders, and the municipality. The second type of obligation concerns agreements between the appellants and other private parties involving such matters as leases of premises and equipment.

I. THE APPELLANTS MAY NOT NOW RAISE CLAIMS CONCERNING ALLEGED CONTRACTS BETWEEN THEMSELVES AND OTHER PRIVATE PARTIES.

Before the Supreme Court of Georgia, the appellants did not properly raise any issue concerning the second type of contractual obligation described above. In particular, the enumeration of errors filed by the appellants in the Supreme Court of Georgia sets forth in error number 2 only the failure of the trial court to hold that Act No. 757 "... has the direct affect [sic] of impairing the obligations of the contractual licenses previously entered into between the City of Mountain View and the Appellants. . . ."³ [Emphasis added.] Further, the appellants made no mention in their enumeration of errors of any agreement entered into between them and other private parties, such as they now assert in their jurisdictional statement. Similarly, no mention of such alleged agreements was made in the decision by the Supreme Court of Georgia.⁴

¹ The municipal charter was repealed by Act No. 757 [(Ga. Laws 1978, p. 3003) Jurisdictional Statement, Appendix "B"].

² Appendices A, B, C and D.

³ Appendix E.

⁴ Jurisdictional Statement, Appendix A.

It is axiomatic that the appellants are barred from raising in this Court any issue as to alleged agreements between themselves and other private parties when such issue was not properly raised before the State's highest court. *Street v. New York*, 394 U.S. 576, 582 (1969).

II. THE TERMINATION OF A MUNICIPAL BUSINESS LICENSE INCIDENTAL TO THE REPEAL OF A MUNICIPAL CHARTER DOES NOT VIOLATE THE CONTRACT CLAUSE.

Assuming arguendo that a municipal business license is a contract, it is nevertheless clear that the laws which existed at the inception of the contractual relationship form a part of the contract as if such laws were expressly referred to or incorporated into the terms of such contract. *Van Hoffman v. City of Quincy*, 4 Wall. 535, 550 (1866).

Long before the General Assembly of Georgia created the City of Mountain View in 1956,⁵ this Court had recognized the virtual absolute control of State legislatures over municipalities. *Trenton v. New Jersey*, 262 U.S. 182 (1923); *Hunter v. Pittsburgh*, 207 U.S. 161 (1907).⁶ The law of the State of Georgia had similarly recognized control of the existence of municipalities by the legislature. In upholding a legislative act giving county commissioners control of the City of Darien, the Supreme Court of Georgia held:

"The corporation of the city of Darien is the creature of the general assembly. That creative power may dissolve, modify, or limit its corporate powers at will." *Churchill v. Walker*, 68 Ga. 681, 686 (1882).

⁵ The City of Mountain View was created by Ga. Laws 1956, p. 2518.

⁶ See also, *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

The principle set forth in *Churchill v. Walker*, *supra*, has not been of mere historical importance. See *Troup County Electric Membership Corp. v. Ga. Power Co.*, 229 Ga. 348, 191 S.E.2d 33 (1972).⁷ Unquestionably then such contracts as existed between the appellants and the municipality were conditioned upon the continued existence of the City of Mountain View.

Moreover, to uphold the appellants' claims would have the effect precluding the exercise by the General Assembly of Georgia of one of its most important powers—the creation and abolition of municipalities in the State of Georgia—an essential attribute of State sovereignty. See *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).⁸ The holdings of this Court interpreting the reach of the Contract Clause do not, however, require this surrender by the State of such an essential attribute of its sovereignty. *United States Trust Co. v. New Jersey*, 431 U.S. 1, 23 (1977).

Based on the foregoing, it is manifest that the termination of municipal business licenses incidental to the repeal of a municipal charter does not violate the Contract Clause.

Thus, the question on which the decision of this cause depends is so insubstantial and the decision by the Supreme Court of Georgia is so obviously correct as not to need further argument.

⁷ "... [M]unicipalities are creatures of the legislature, and their existence may be established, altered, enlarged or diminished, or utterly abolished by the legislature." 229 Ga. at 352, 191 S.E.2d at 37.

⁸ "We [the Court] freely recognize the breadth and importance of this aspect of the State's political power." 364 U.S. at 342.

CONCLUSION

For the reasons stated herein, this appeal should be either dismissed or affirmed.

Respectfully submitted,

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant
Attorney General

DON A. LANGHAM
First Assistant
Attorney General

MICHAEL J. BOWERS
Senior Assistant
Attorney General

R. DOUGLAS LACKEY
Assistant Attorney General

Please serve:

MICHAEL J. BOWERS
132 State Judicial Building
Atlanta, Georgia 30334
(404) 656-3330

January, 1979

APPENDIX A

LICENSE

City of

MOUNTAIN VIEW

No. 1743

Received of Jet Stop Market Inc Mountain View, Ga., Jan 6 1978
Andrewhill & Pine Ltr \$100.00
Dollars

License for James L. Fox

Expires 12/31/77 CITY CLERK James L. Fox

NOT TRANSFERABLE

2a

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE, ATLANTA

January 12, 1979

I hereby certify that the foregoing page, hereto attached, contains a true and correct copy of page 13 (Exhibit "B" to the Complaint) of the trial court clerk's record in the Supreme Court of Georgia in Case No. 33625, Hazel Ruth Logan et al. v. W. E. Strickland, Comr., et al., as appears from the records and files in this office.

Witness my signature and the seal of the said court
hereto affixed the day and year first above written.

[SEAL]

/s/ JOLINE B. WILLIAMS, Clerk

APPENDIX B

7 LITERS AVERAGE

City of

Received of

Get Two Market

Jan. 6 1978

Mountain View, Ga., Jan. 6 1978

100 Thousand Seven Hundred and Fifty

10
 11
 12
 13
 14
 15
 16

License for John J. McLaughlin

Expires November 21, 1979 City Clerk Wanda H. Jones

"This license is a mere privilege, subject to be revoked and annulled by the Mayor and Council of the City of New York, New York, at any time, with or without cause, and with or without notice or hearing."

2b

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE, ATLANTA

January 12, 1979

I hereby certify that the foregoing page, hereto attached, contains a true and correct copy of page 14 (Exhibit "C" to the Complaint) of the trial court clerk's record in the Supreme Court of Georgia in Case No. 33625, Hazel Ruth Logan et al. v. W. E. Strickland, Comr., et al., as appears from the records and files in this office.

Witness my signature and the seal of the said court
hereto affixed the day and year first above written.

[SEAL]

/s/ JOLINE B. WILLIAMS, Clerk

APPENDIX C

LICENSE

City of

NO 1742

MOUNTAIN VIEW

Mountain View, Ga.

June 6, 1978

Received of

Yellow Jacket #3

\$100.00

Dollars

Five Hundred + 00/100

License for

Henry Allen

Expires December 31, 1978

CITY CLERK

NOT TRANSFERABLE

EXHIBIT "D"

2c

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE, ATLANTA

January 12, 1979

I hereby certify that the foregoing page, hereto attached, contains a true and correct copy of page 15 (Exhibit "D" to the Complaint) of the trial court clerk's record in the Supreme Court of Georgia in Case No. 33625, Hazel Ruth Logan et al. v. W. E. Strickland, Comr., et al., as appears from the records and files in this office.

Witness my signature and the seal of the said court
hereto affixed the day and year first above written.

[SEAL]

/s/ JOLINE B. WILLIAMS, Clerk

APPENDIX D

Not Transferrable

LICENSE
FOR ALCOHOLIC BEVERAGE
City of
MOUNTAIN VIEW

No. 122

Received of Yellow Jacket #3 Mountain View, Ga., Jan 6 19 78
Joe Thelander, Green Hundred & Fifty 7 mi. N.E. S. 2750.00 Dollars
Greenwood License for sale of packaged beer & wine
Expires December 31, 1978 City Clerk Gene Williams

"This license is a mere privilege, subject to be revoked and annulled by the Mayor and Council of the City of Mountain View with or without cause, and with or without notice or hearing."

2d

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE, ATLANTA

January 12, 1979

I hereby certify that the foregoing page, hereto attached, contains a true and correct copy of page 16 (Exhibit "E" to the Complaint) of the trial court clerk's record in the Supreme Court of Georgia, in Case No. 33625, Hazel Ruth Logan et al. v. W. E. Strickland, Comr., et al., as appears from the records and files in this office.

Witness my signature and the seal of the said court
hereto affixed the day and year first above written.

[SEAL]

/s/JOLINE B. WILLIAMS, Clerk

APPENDIX E

**IN THE SUPREME COURT
STATE OF GEORGIA**

HAZEL RUTH LOGAN, Individually;
GRADY MOSS, Individually;
YELLOW JACKET MARKET, INC.:
H. W. SMITH, Individually;
JET STOP MARKETS, INC.:
EMORY B. BAZEMORE, Individually;
Appellants,

CASE NOS.
33625

vs.

W. A. STRICKLAND, Georgia State
Revenue Commissioner, ARTHUR K.
BOLTON, Attorney General of the
State of Georgia; ROBERT A. "BOB"
DEYTON, Sheriff of Clayton County;
HOWARD SMITH, Chief of Police of
Clayton County; COL. J. H. COFER,
Commissioner of Georgia Department of
Public Safety; COUNTY OF CLAYTON
COUNTY COMMISSIONERS OF
CLAYTON COUNTY:

ENUMERA-
TION OF
ERRORS

Appellees.

1.

The Honorable HUBERT C. MORGAN, Judge Emeritus for the Superior Court of the Clayton Judicial Circuit, erred in *failing* to hold that House Bill 1228 was unconstitutional for the reason that it was in violation of Art. III, Section VII, Paragraph IX of the Constitution of the State of Georgia (Georgia Code Ann. Sec. 2-1309) in that the notice of the intention to apply for the said local legislation was not published as required by the said constitutional provision and in that the "Affidavit of Publication" attached to House Bill 1228 and being made a part thereof is insufficient and defective on its face and does not comply with the requirements of Art. III,

Section VII, Paragraph IX of the Constitution of the State of Georgia.

2.

The Honorable HUBERT C. MORGAN, Judge Emeritus for the Superior Court of the Clayton Judicial Circuit, erred in *failing* to hold that Act No. 757, by its abolishment of the Charter for the City of Mountain View, has the direct effect of impairing the obligations of the contractual licenses previously entered into between the City of Mountain View and the Appellants, YELLOW JACKET MARKET, INC., and JET STOP MARKETS, INC., and therefore, the said Act No. 757 is unconstitutional for the reason that it is in violation of Article I, Section I, Paragraph VIII of the Constitution of the State of Georgia (Georgia Code Ann. Sec. 2-107).

3.

The Honorable HUBERT C. MORGAN, Judge Emeritus for the Superior Court of the Clayton Judicial Circuit, erred in *failing* to hold that Act No. 757, by its revocation of the Charter for the City of Mountain View, is in contravention of Article III, Section VII, Paragraph IX of the Constitution of the State of Georgia in that it abolishes the offices of eight (8) officials for the City of Mountain View who have been duly elected by the vote of the citizens of the municipality of Mountain View said offices being abolished without the local act accomplishing the same being approved by the people within the municipality of Mountain View by a referendum on the question.

STATEMENT OF JURISDICTION

The Supreme Court of Georgia, rather than the Court of Appeals, has jurisdiction of this case on appeal for the reason that the Constitutionality of a statute of the State of Georgia has been drawn in question.

Respectfully submitted,

/s/ DOUGLAS N. PETERS

DOUGLAS N. PETERS

Attorney for Appellants

Suite 440
First National Bank Building
Decatur, GA 30030
377-0581

CERTIFICATE OF SERVICE

I, Douglas N. Peters, do hereby certify that I have this date served a copy of the within and foregoing Enumeration of Errors in Case Numbers 33625, 33626, and 33627 upon:

MR. JOHN R. McCANNON
Clayton County Attorney
114 N. McDonough Street
Jonesboro, GA 30236

MR. GEORGE E. GLAZE
Assistant Clayton County Attorney
120 N. McDonough Street
Jonesboro, GA 30236

MR. MICHAEL J. BOWERS
Senior Assistant Attorney General
132 State Judicial Building
Atlanta, GA 30334

by depositing the same in the United States Mail in a properly addressed envelope with adequate first class postage thereon.

This 1st day of May, 1978.

/s/ DOUGLAS N. PETERS

DOUGLAS N. PETERS
Attorney for Appellants

SUPREME COURT OF THE STATE OF GEORGIA CLERK'S OFFICE, ATLANTA

January 12, 1979

I hereby certify that the foregoing three pages, hereto attached, contain a true and correct copy of the enumeration of errors filed in the Supreme Court of Georgia in Case No. 33625, Hazel Ruth Logan et al. v. W. E. Strickland, Comr., et al., as appears from the records and files in this office.

Witness my signature and the seal of the said court hereto affixed the day and year first above written.

[SEAL]

/s/ JOLINE B. WILLIAMS, Clerk